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SERVICE DATE – JANUARY 5, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 229X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN ELLIS
COUNTY, TX

Decided: January 4, 2006

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.57-mile line of railroad known as the Waxahachie Industrial Lead extending from milepost 798.03, near Waxahachie, to milepost 802.60, near Nena, in Ellis County, TX. Notice of the exemption was served and published in the Federal Register on December 7, 2005 (70 FR 72876). The exemption is scheduled to become effective on January 6, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on December 12, 2005. In the EA, SEA states that UP has not proposed the discharge of dredged or fill material in waters of the United States, including wetlands. However, SEA notes that the U.S. Army Corps of Engineers (Corps) has not responded to UP's request for assistance in identifying any designated wetlands or 100-year flood plains that could be affected by the proposed abandonment. Therefore, SEA recommends that UP be required to consult with the Corps prior to commencement of any salvage activities to determine whether a permit under section 404 of the Clean Water Act, 33 U.S.C. 1344, is required.

SEA also states in the EA that the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified two geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that UP be required to notify NGS not less than 90 days in advance of any planned activities that might disturb or destroy the two station markers.

SEA further states in the EA that the U.S. Fish and Wildlife Service (FWS) has not responded to UP's request for assistance in identifying Federally listed species that may be affected by the proposed abandonment. SEA notes that examples of Federally listed species that are known to occur in the region of the proposed abandonment are the black-capped vireo, golden-cheeked warbler, and the Texas poppy mallow. Therefore, to facilitate a review of the possible effects of this project on endangered or threatened species or areas designated as critical habitat, SEA recommends that UP be required to consult with FWS regarding possible impacts to Federally listed threatened and endangered species that may occur in the vicinity of the line proposed for abandonment.

Comments to the EA were due by December 27, 2005. No comments to the EA were received. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed. Based on SEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the conditions that UP: (1) consult with the Corps prior to commencement of any salvage activities to determine whether a permit under section 404 of the Clean Water Act, 33 U.S.C. 1344, is required; (2) notify NGS not less than 90 days in advance of any planned activities so that NGS may plan for relocation of the station markers identified on the line; and (3) consult with FWS regarding possible impacts to Federally listed threatened and endangered species that may occur in the vicinity of the line proposed for abandonment.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary